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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/559,761

12/07/2005

Christoph Leinemann

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30743

7590

06/11/2008

WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.

11491 SUNSET HILLS ROAD

SUITE 340

RESTON, VA 20190

EXAMINER

HOGAN, JAMES SEAN

ART UNIT

PAPER NUMBER

3752

MAIL DATE

DELIVERY MODE

06/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/559,761	<b>Applicant(s)</b> LEINEMANN, CHRISTOPH	
	<b>Examiner</b> JAMES S. HOGAN	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/7/05</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 7,241,137 to the Applicant. Although the conflicting claims are not identical, they are not patentably distinct from each other because they describe the same invention with no difference in any constructive form that would create a differing embodiment, and do so only in a manner that requires a differing classification of the claimed invention.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,179,608 to Kraemer et al

4. As per claim 1, Kraemer teaches flame guard having a flow cross section (at 2) that terminates a conduit (implied), in which there is a flame guard insert having a large number of passage gaps (21) ensuring that it is permanently fireproof, characterized in that, within the flow cross section (at 2), at least one concentric annular section (60) is formed so as to be solid without the passage gaps, around which annular sections (4) having the passage gaps are formed.

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5. As per claim 2, as shown in figure 3, the cross-sectional area of the flame guard insert with the passage gaps is greater than the cross-sectional area without passage gaps.
6. As per claim 3, a centrally arranged core (60) is provided as a concentric section.
7. As per claim 4, Kraemer et al discloses that the concentric section (60) is formed possibly of a highly thermally conductive material (Col. 8, lines 11-12).
8. As per claim 5, shown in Figure 5 is a plurality of annular sections are provided as concentric sections (75), which are in each case followed in the radial direction by flame guard arrangements with passage gaps (21).
9. As per claims 6 and 7, in that the concentric section is formed from a smooth metal strip (76) or a corrugated metal strip (76) wound spirally closely on itself (See col. 3, lines 41, 42).
10. As per claim 8, the flow cross section (2) is shown to be (See Figure 3) of an annular form.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is as follows.

U.S. Patent No. 2,420,599 to Jurs

U.S. Patent No. 6,342,082 to Leinemann

U.S. Patent No. 4,909, 730 to Roussakis et al

U.S. Patent No. 5,415,233 to Roussakis et al

U.S. Patent No. 6,338,319 to Vago

U.S. Patent No. 3,748,111 to Klose

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES S. HOGAN whose telephone number is (571)272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. S. H./  
Examiner, Art Unit 3752

/Len Tran/  
Supervisory Patent Examiner, Art Unit 3752